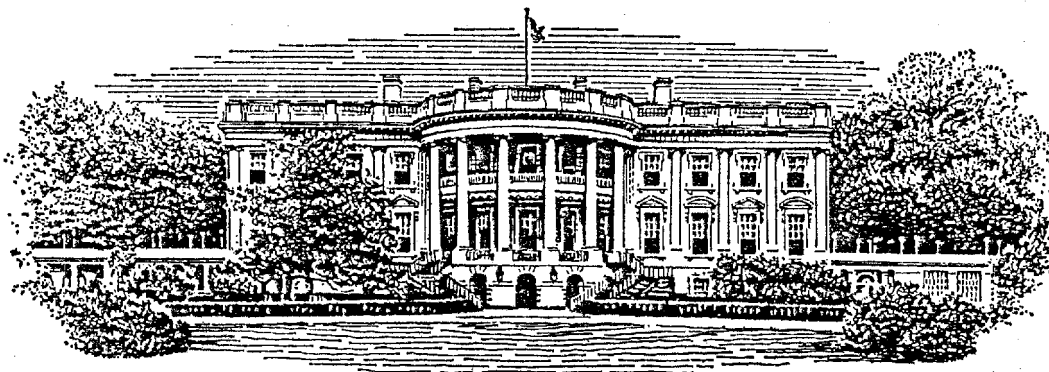


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Weekly Compilation of
**PRESIDENTIAL
DOCUMENTS**

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makes FHA mortgage insurance available to a greater number of families by reducing required downpayments, expanding the limits on mortgages eligible for Federal insurance, and enabling FHA on an experimental basis to tailor plans for loan repayment to the unique circumstances of individual home buyers. Other sections of the act broaden the lending and investment powers of federally regulated financial institutions, making more credit available for mortgage loans, and thereby providing some needed help for the housing sector.

By prohibiting discrimination on the basis of sex in making mortgage loans, this measure will also enable millions of hardworking women and married couples to obtain the mortgage credit to which their economic position clearly entitles them. I fully support these efforts to eliminate discrimination based on race or sex.

Finally, S. 3066 authorizes a more flexible approach to assisting low- and moderate-income families obtain adequate housing. This new lower income housing assistance program should also help increase the supply of housing in areas where vacancies are unreasonably low.

No one expects this bill to bring substantial immediate relief to the housing market, but over the long haul it should provide the foundations for better housing for all Americans.

This act is important not only for what it does but for how it came about. Like any omnibus bill, S. 3066 has minuses as well as pluses. But it is the product of significant cooperation and compromise by the legislative and executive branches of this Government, and, as such, it is an important example of how the Congress and I intend to approach the Nation's problems in the future.

NOTE: As enacted, the bill (S. 3066) is Public Law 93-383, approved August 22, 1974.

Freedom of Information Act Amendments

*The President's Letter to the Chairmen of the Conference Committee Considering the Amendments.
Dated August 20, 1974. Released August 23, 1974*

Dear Ted: (Dear Bill:)

I appreciate the time you have given me to study the amendments to the Freedom of Information Act (H.R. 12471) presently before you, so that I could provide you my personal views on this bill.

I share your concerns for improving the Freedom of Information Act and agree that now, after eight years in existence, the time is ripe to reassess this profound and worthwhile legislation. Certainly, no other recent legislation more closely encompasses my objectives for open

Government than the philosophy underlying the Freedom of Information Act.

Although many of the provisions that are now before you in Conference will be expensive in their implementation, I believe that most would more effectively assure to the public an open Executive branch. I have always felt that administrative burdens are not by themselves sufficient obstacles to prevent progress in Government, and I will therefore not comment on those aspects of the bill.

There are, however, more significant costs to Government that would be exacted by this bill—not in dollar terms, but relating more fundamentally to the way Government, and the Executive branch in particular, has and must function. In evaluating the costs, I must take care to avoid seriously impairing the Government we all seek to make more open. I am concerned with some of the provisions which are before you as well as some which I understand you may not have considered. I want to share my concerns with you so that we may accommodate our reservations in achieving a common objective.

A provision which appears in the Senate version of the bill but not in the House version requires a court, whenever its decision grants withheld documents to a complainant, to identify the employee responsible for the withholding and to determine whether the withholding was "without (a) reasonable basis in law" if the complainant so requests. If such a finding is made, the court is required to direct the agency to suspend that employee without pay or to take disciplinary or corrective action against him. Although I have doubts about the appropriateness of diverting the direction of litigation from the disclosure of information to career-affecting disciplinary hearings about employee conduct, I am most concerned with the inhibiting effect upon the vigorous and effective conduct of official duties that this potential personal liability will have upon employees responsible for the exercise of these judgments. Neither the best interests of Government nor the public would be served by subjecting an employee to this kind of personal liability for the performance of his official duties. Any potential harm to successful complainants is more appropriately rectified by the award of attorney fees to him. Furthermore, placing in the judiciary the requirement to initially determine the appropriateness of an employee's conduct and to initiate discipline is both unprecedented and unwise. Judgments concerning employee discipline must, in the interests of both fairness and effective personnel management, be made initially by his supervisors and judicial involvement should then follow in the traditional form of review.

There are provisions in both bills which would place the burden of proof upon an agency to satisfy a court that a document classified because it concerns military or intelligence (including intelligence sources and methods) secrets and diplomatic relations is, in fact, properly classified, following an *in camera* inspection of the document

by the court. If the court is not convinced that the agency has adequately carried the burden, the document will be disclosed. I simply cannot accept a provision that would risk exposure of our military or intelligence secrets and diplomatic relations because of a judicially perceived failure to satisfy a burden of proof. My great respect for the courts does not prevent me from observing that they do not ordinarily have the background and expertise to gauge the ramifications that a release of a document may have upon our national security. The Constitution commits this responsibility and authority to the President. I understand that the purpose of this provision is to provide a means whereby improperly classified information may be detected and released to the public. This is an objective I can support as long as the means selected do not jeopardize our national security interests. I could accept a provision with an express presumption that the classification was proper and with *in camera* judicial review only after a review of the evidence did not indicate that the matter had been reasonably classified in the interests of our national security. Following this review, the court could then disclose the document if it finds the classification to have been arbitrary, capricious, or without a reasonable basis. It must also be clear that this procedure does not usurp my Constitutional responsibilities as Commander-in-Chief. I recognize that this provision is technically not before you in Conference, but the differing provisions of the bills afford, I believe, grounds to accommodate our mutual interests and concerns.

The Senate but not the House version amends the exemption concerning investigatory files compiled for law enforcement purposes. I am concerned with any provision which would reduce our ability to effectively deal with crime. This amendment could have that effect if the sources of information or the information itself are disclosed. These sources and the information by which they may be identified must be protected in order not to severely hamper our efforts to combat crime. I am, however, equally concerned that an individual's right to privacy would not be appropriately protected by requiring the disclosure of information contained in an investigatory file about him unless the invasion of individual privacy is *clearly unwarranted*. Although I intend to take action shortly to address more comprehensively my concerns with encroachments upon individual privacy, I believe now is the time to preclude the Freedom of Information Act from disclosing information harmful to the privacy of individuals. I urge that you strike the words "clearly unwarranted" from this provision.

Finally, while I sympathize with an individual who is effectively precluded from exercising his right under the Freedom of Information Act because of the substantial costs of litigation, I hope that the amendments will make it clear that corporate interests will not be subsidized in their attempts to increase their competitive position by using this Act. I also believe that the time limits for agency

action are unnecessarily restrictive in that they fail to recognize several valid examples of where providing flexibility in several specific instances would permit more carefully considered decisions in special cases without compromising the principle of timely implementation of the Act.

Again, I appreciate your cooperation in affording me this time and I am hopeful that the negotiations between our respective staffs which have continued in the interim will be successful.

I have stated publicly and I reiterate here that I intend to go more than halfway to accommodate Congressional concerns. I have followed that commitment in this letter, and I have attempted where I cannot agree with certain provisions to explain my reasons and to offer a constructive alternative. Your acceptance of my suggestions will enable us to move forward with this progressive effort to make Government still more responsive to the People.

Sincerely,

GERALD R. FORD

NOTE: This is the text of identical letters addressed to Senator Edward M. Kennedy and Representative William S. Moorhead.

The text of the letter was made available by the White House Press Office. It was not issued in the form of a White House press release.

Digest of Other White House Announcements

Following is a listing of items of general interest which were announced to the press during the period covered by this issue but which are not carried elsewhere in the issue. Appointments requiring Senate approval are not included since they appear in the list of nominations submitted to the Senate, below.

August 19

The President left Washington for a trip to Chicago, Ill., where he addressed the annual convention of the Veterans of Foreign Wars. Following his remarks, the President returned to Washington.

The following Ambassadors presented their credentials to the President in ceremonies at the White House: Cecil B. Williams of Barbados, Rodolfo Silva Vargas of Costa Rica, Samuel Ernest Quarm of Ghana, Miguel Angel Burelli Rivas of Venezuela, Jaime Alba Delibes of Spain, and Sabah Kabbani of Syria.

The President met with senior staff members of the Domestic Council, including Director Kenneth R. Cole, Jr., and Deputy Director James H. Cavanaugh.

The President and Mrs. Ford hosted a reception for members of the Vice Presidential Protective Division, United States Secret Service.

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25X1 [redacted]
25X1 5. [redacted] IC Staff, called to say she had
25X1 learned, [redacted] from Kent Crane, in the office of Representative
Peter Frelinghuysen, that Representatives Frelinghuysen, Broomfield, Jordan,
Zablocki, and Senators Fulbright, Humphrey and Fong will be leaving for
China on or about 31 August. Crane has asked us to provide Frelinghuysen
with two copies of the China Atlas and any other material we thought appropriate.
25X1 I told [redacted] we would pick up on this.

25X1 6. [redacted] Called Ed Braswell, Chief Counsel, Senate
25X1 Armed Services Committee, and in response to his question yesterday, briefed
25X1 him on the situation as we knew it [redacted]
[redacted]

25X1 7. [redacted] Called Bill Phillips, Staff Director, House
Government Operations Subcommittee on Foreign Operations and Government
Information, to tell him I wanted to make sure he was clear on the Agency's
✓ position on the Freedom of Information Act and then repeated what I had
previously reviewed with Jim Kronfeld, of his Subcommittee staff, on 12 August.
Phillips recognizes that we are not jumping for joy over the legislation but
said he thinks we are in good shape under it. See Memo for Record.

25X1 8. [redacted] Met with Ed Braswell, Chief Counsel, Senate
Armed Services Committee, and delivered to him the Director's letter of
22 August 1974 forwarding copies of the final versions of the "Objectives for
the Intelligence Community for Fiscal Year 1975 and the Key Intelligence
Questions for Fiscal Year 1975." I reviewed briefly with Braswell the
background and purpose of the objectives and questions. Braswell said he
would review them before handing them on to the Chairman.

25X1 [redacted]
CONFIDENTIAL

THE WASHINGTON POST

DATE 22 AUG 74 PAGE 9

Veto Threat Disrupts Information Act Talks

By Bob Kuttner

Washington Post Staff Writer

A House-Senate conference committee meeting to complete action on long-stalled amendments to the Freedom of Information Act broke up yesterday in disarray over a letter from President Ford warning that the bill might be vetoed unless several changes were made.

Last week, as the conferees were on the verge of finishing the measure, they deferred to a telephoned request from the Justice Department indicating that the new President wanted a week to review the bill and make recommendations.

The recommendations came yesterday in individual letters to the conferees. In the letters, President Ford criticized several already-approved sections intended to strengthen enforcement of the 1966 Freedom of Information Act.

The President's objections echoed long-standing criticisms of the bill by the Justice Department. Specifically, Mr. Ford said he could not accept the bill's provision permitting federal judges to determine whether secret documents were properly classified in the first place. That section was intended to overrule the Supreme Court's ruling that the government's classification of a document is not subject to judicial review.

Mr. Ford also said he objects to another key section giving the public broader access to information in government investigatory files. And he said he opposes the sanction provision added by the Senate setting penalties for bureaucrats who wrongfully withhold information from the public.

"Neither the best interests

of government nor the public would be served by subjecting an employee to this kind of personal liability for the performance of his official duties," the President wrote.

However, the House conferees decided to risk a veto and voted 4 to 3 to accept the sanction provision with minor modifications. Later, the three outvoted House members, Frank Horton (R-N.Y.), John N. Erlenborn (R-Ill.) and Chet Holifield (D-Calif.) announced they would refuse to sign the conference report.

On the section giving courts the power to overrule security classifications a majority of the conferees decided to compromise.

They agreed to language denying public access to information "from a confidential source in the case of a record compiled by a criminal law enforcement agency in the course of a criminal or national security investigation."

That concession was too much for Rep. John E. Moss (D-Calif.), architect of the original 1966 Freedom of Information Act. "I can't sign this," Moss declared, and walked out.